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MEMO ENDORSEMENT.

The Court is prepared to go forward with sentencing tomorrow
without considering the recommendation of Probation.

10/16/2024

SO ORDERED.



LEWIS J. LIMAN
United States District Judge

October 16, 2024

By Email and ECF

Honorable Lewis J. Liman
United States District Court
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Michael Shvartsman*, 23 Cr. 307 (LJL)

Dear Judge Liman:

On behalf of Michael Shvartsman, this letter respectfully requests that the Court consider re-assigning the Presentence Report (“PSR”), and the PSR Recommendation, to another Probation Officer in light of the current PSR (and the PSR’s Recommendation’s) reliance on and discussion of Mr. Shvartsman’s decision not to file a Personal Financial Statement (“PFS”) on the advice of counsel and pursuant to his Constitutional rights.

As discussed on pages 31-34 of our Sentencing Memorandum, the Probation Officer of the current final PSR addressed, quite disparagingly, Mr. Shvartsman’s decision not to file a Financial Statement on para’s 111 and 117 of the PSR. Counsel had advised Probation of our position on the Financial Statement on September 17, 2024, yet the PSR, dated October 1, 2024, nonetheless criticized that determination. Further, the PSR Recommendation is 46 months, the bottom of the plea agreement, notwithstanding that at para’s 134-135, the PSR notes that there are basis for a downward adjustment, and the same officer recommended a sentence of one year and a day for Mr. Shvartsman’s brother, Gerald – a sentence almost one quarter of that recommended for Mr. Shvartsman. We also note that the Judiciary Sentencing Information (JSIN) showed an average sentence for 5 similar cases of 27-28 months. We attribute this disparity to the Officer’s displeasure with Mr. Shvartsman’s decision not to file a Financial Statement. (See pages 31-34 of our Sentencing Memorandum)

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Given the consideration courts place on the PSR Recommendation, we respectfully submit that the current PSR Recommendation is unconstitutionally tainted and that the PSR should be re-assigned to an officer instructed not to consider Mr. Shvartsman's decision not to file a Financial Statement in the body of the PSR or in the Recommendation. We believe that when the improper consideration is removed, a new PSR would recommend something closer to 24-27 months. Mr. Shvartsman is entitled to an untainted PSR and Recommendation.

If the Court chooses instead to proceed with sentence, for the reasons discussed above, we respectfully ask that the Court not consider Probation's sentencing recommendation.

Thank you for consideration of this matter.

Respectfully yours,

/s/

Alan S. Futerfas and Dennis C. Vacco

cc: AUSA's Daniel Nessim and Matthew Shahabian

Dennis C. Vacco, Esq.